

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

JAMES COLEMAN and LARRY KIMBRO and
CARL MOTEN and ADELLE NEWBELL and
PHILLIP SCHULTE and NAOMI TACKETT and
DAVID TAMPLIN and CAROLYN TURNER and
PATRICIA WARD and TERRY WHITE and
BRIAN and CYNTHIA WRIGHT, husband and wife,
all of whom are residents
of the State of West Virginia,

Plaintiffs,

v.

Civil Action No. 2:11-0366

UNION CARBIDE CORPORATION, a Delaware
corporation, having its principal place
of business in the State of West Virginia and
THE DOW CHEMICAL COMPANY, a Delaware
corporation, with its principal place of
business in Michigan, and EMC ALLOY, L.P.
f/k/a ELKEM METALS COMPANY -- ALLOY, L.P., a
Norwegian corporation, having its principal
offices in the State of Pennsylvania, and
GLOBE SPECIALTY METALS, INC., a Delaware
corporation, having its principal place
of business in the State of New York, and
GLOBE METALLURGICAL, INC., a Delaware corporation,
having its principal place of business in
the State of Ohio, and WEST VIRGINIA ALLOYS, INC.,
a Delaware corporation, having its principal
place of business in the State of West Virginia, and
WVA MANUFACTURING LLC, a Delaware corporation,
having its principal place of business in the
State of West Virginia,

Defendants.¹

¹ The Clerk is directed to amend the style as reflected in the caption.

MEMORANDUM OPINION AND ORDER

Pending are the plaintiffs' motions (1) to file a third amended class action complaint, filed December 10, 2012, and (2) for an order deferring further briefing and any hearing on defendants' Daubert motion pending a ruling by the Supreme Court in Comcast Corporation v. Behrend ("deferral motion"), filed December 14, 2012, and the defendants' motions (1) to exclude the opinions of the plaintiffs' expert witnesses Dr. James Dahlgren, Greg Haunschild, Randy Horsak, and Nicholas Cheremisinoff, and (2) to strike the untimely affidavits of the plaintiff's expert witnesses, namely, Mr. Haunschild, Dr. Dahlgren, and Randy Horsak, filed December 18, 2012.²

Inasmuch as it is unopposed, it is ORDERED that the motion to file the proposed third amended class action complaint be, and it hereby is, granted. The previously-filed motion to dismiss is deemed the defendants' response to the third amended pleading such that no further briefing on that motion is required.

On December 26, 2012, the court conducted a telephonic status conference with counsel. As more fully reflected on the

² Also listed as pending on the docket is the plaintiffs' expedited motion for an order modifying the court's October 5, 2012, order as it applies to Steven Cole, filed October 19, 2012. Inasmuch as the motion was addressed in an order entered October 26, 2012, the Clerk is directed to terminate the motion.

record of the proceeding, the court found that the subject affidavits expand considerably the scope of the issues presented on class certification without a concomitant showing of good cause or other substantial justification. As further more fully reflected on the record, and with the parties' agreement to the extent set forth on the record, it is ORDERED that the motion to strike be, and it hereby is, denied, with the exception that the plaintiffs be, and they hereby are, ORDERED to pay over to the defendants the attorney fees and costs reasonably and necessarily attributable to the defendants' taking the additional discovery necessitated by the plaintiffs' failure to include the now-expanded scope of the issues in the original reports of the three challenged experts.

Inasmuch as the plaintiffs' actions have necessitated a substantial modification of time frame in this action, it is further ORDERED that the schedule be, and it hereby is, modified as follows:

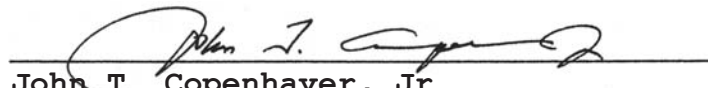
Plaintiffs produce all discoverable information in the files of Mr. Haunschild, Dr. Dahlgren, and Mr. Horsak relating to their affidavits and any subsequently filed supplemental reports authored by them.	01/04/2013
Plaintiffs serve their amended expert reports to formalize and elaborate upon the opinions expressed in the affidavits of Mr. Haunschild, Dr. Dahlgren, and Mr. Horsak	01/11/2013
Defendants' re-depose plaintiff experts as necessary.	01/18/2013
Defendants' serve their amended responsive expert disclosures.	01/22/2013
Plaintiffs re-depose defendant experts as necessary.	01/24/2013

Response on class certification motion.	02/08/2013
Plaintiffs' <u>Daubert</u> motion and defendants' reformulated <u>Daubert</u> motion.	02/08/2013
Reply on class certification motion.	02/25/2013
Responses on <u>Daubert</u> motions.	02/25/2013
Replies on <u>Daubert</u> motions.	03/08/2013
Class certification hearing.	04/10/2013 10:00 am

It is further ORDERED that the plaintiffs' deferral motion be, and it hereby is, denied without prejudice in view of the schedule modification ordered above. It is additionally ORDERED that the motion to exclude the opinions of the plaintiffs' expert witnesses Dr. Dahlgren, Mr. Haunschild, Mr. Horsak, and Mr. Cheremisinoff be, and it hereby is, denied without prejudice to the defendants' filing of their reformulated Daubert motion as earlier noted.

The Clerk is directed to forward copies of this order to all counsel of record and any unrepresented parties.

DATED: December 27, 2012


 John T. Copenhaver, Jr.
 United States District Judge